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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Limitations on Commercial Time on Television Broadcast Stations	)))	MM Docket No. 93-254

To: The Commission

COMMENTS OF THE FBC TELEVISION AFFILIATES ASSOCIATION

The FBC Television Affiliates Association (the "Association"), by its attorneys, hereby comments on the Commission's Notice of Inquiry, released October 7, 1993, in the above-referenced proceeding.[1/]

Introduction

1. As an association composed of largely UHF former independent television stations that have affiliated with the Fox Network, the FBC Television Affiliates Association is exceedingly interested in the impact that any rules resulting from this proceeding will have on free, over-the-air broadcast television service to the public. Because the Association's experience leads it to conclude that any limitation upon the amount or form

1/ Limitations on Commercial Time on Television Broadcast Stations, Notice of Inquiry, MM Docket No. 93-254, FCC 93-459, released October 7, 1993 (the "Notice").

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of commercials aired by a broadcast station would be extremely detrimental to the broadcast industry, and hence, to the public it serves, the Association believes that this proceeding should be terminated immediately and that no rules, policies or guidelines regarding the commercial content of broadcast programming should be issued.

Discussion

2. Being composed of mostly UHF stations that were originally independents, the majority of the stations in the Association are less than a decade old. They are part of the large increase in the number of independent stations that occurred during the 1980's when relaxed Commission regulations provided these stations with the flexibility necessary to rapidly adapt to changing market conditions. This flexibility was essential for putting these stations on the air. It ultimately proved vital to their survival during the difficult recession. By unfettering broadcasters from unnecessary regulations, the Commission not only provided an opportunity for new stations to operate, but also created a business atmosphere conducive to the growth of new broadcast program sources, such as the Fox Network. In turn, the public benefitted from increased program choices as well as the introduction of innovative programming that had not been tried by the older networks.

3. The time has now come for the Commission to restate its confidence in the need for flexibility regarding broadcast

commercial practices. Because of increased competition from cable and other multichannel video distribution technologies, television stations are increasingly finding themselves at a disadvantage. Not only does cable offer viewers numerous channels of competitive programming, thereby diluting the broadcast audience, but cable is increasingly able to purchase and produce high quality programming because of its dual revenue streams -- subscriber fees and advertising revenues -- whereas broadcasters must rely solely on advertising revenues for their support.

4. While the Association's members accept the challenge of competing for viewers while providing public service programming that cannot be found on cable, it recognizes that it faces an uphill battle. Given the tremendous technical (multiple channels) and financial (multiple revenue sources) advantages held by cable, broadcasters must fight to maximize their single revenue source -- the sale of advertising -- in order to upgrade their technical facilities and purchase the programming necessary to keep the inherent competitive gap between broadcast and cable as narrow as possible. The challenge of this endeavor will grow even more intense in the near future as broadcast television stations have to fund the acquisition of HDTV equipment in order to meet the Commission's HDTV timetable and compete with the high definition cable service that will be available.

5. Unless new sources of broadcast revenue are located, the funds necessary for this effort will have to come from the

sale of broadcast advertising. Given this fact, television broadcasters need the greatest possible flexibility to maximize their advertising revenue stream. Limitations on commercial matter could inhibit the development of new commercial formats that would otherwise be fully consistent with the operation of a public service broadcast station. The Association recognizes, as the Commission must, that the amount of advertising on television stations is self-regulating, since extensive commercialization would drive away viewers, which, in turn, would drive away advertisers. It is therefore important that stations be given the flexibility to experiment with commercial amounts and formats that maximize a station's attractiveness to advertisers while retaining its attractiveness to viewers.

6. Commercial limitations would not only remove this flexibility, but would reduce the diversity of free programming available to the public. For example, lost advertising revenues will clearly limit a station's ability to purchase new and diverse programming. Moreover, commercial limitations would necessarily require drawing a sharp line between commercial matter and non-commercial/program matter and could therefore force programs that are presently viewed by audiences as entertainment or informative to be categorized as forbidden commercial matter that must be removed from the station's schedule (e.g., paid religious programming). There is little justification for such a result since it would merely be the Commission substituting its judgment for that of the public as to

what is acceptable or attractive programming.

7. Commercial limits that effectively eliminate infomercials and home shopping services on broadcast television are also inequitable, as they will drive such revenue-producing programming to cable, thereby increasing the competitive imbalance between broadcast and cable television. With the possible exception of requiring broadcasters to channel indecent programming into certain hours of the day, the Commission could not possibly justify a proclamation that certain types of programming may not be shown by broadcasters when cable operators are free to air it. Such a position would not only be inequitable, but would threaten the ability of many stations to compete and survive in a multichannel world.

8. Another problem with commercial limits is that stations that already expend a significant amount of their scarce personnel resources maintaining documentation of their station's EEO efforts and its compliance with the children's commercial limits would now be forced to expend even more personnel resources monitoring commercial compliance on an around-the-clock basis. Such a reallocation of resources is particularly unfortunate at a time when stations must keep their operations as lean and productive as possible in order to survive.

9. Ultimately, the need for commercial flexibility is twofold. First, existing stations must continue to use their advertising flexibility to attract new advertisers to the medium and to retain existing advertisers who are increasingly defecting

to cable as cable audiences grow larger. Second, a flexible and attractive business environment is essential to attracting new entrants and investors into the broadcast industry to build and operate new stations and establish new broadcast program sources. For example, the Fox Network, which has flourished because of its innovative programming and advertising efforts, was able to introduce its program service because the deregulated environment in which it was born also nurtured the growth of many independent stations desirous of a network affiliation. This attractive business environment made it reasonable for Fox to invest significant amounts of money into creating a broadcast network to serve those independent stations. By making maximum use of its facilities while not having to expend more resources than absolutely necessary negotiating a regulatory jungle, the Fox Network was able not only to survive, but also to bring many financially weak UHF stations through the recession with minimal harm to their public service capabilities.

10. The importance of maintaining this atmosphere of business flexibility is highlighted by the recent efforts of Paramount and Warner to launch a fifth and a sixth broadcast network. Limitations on commercial amounts (and as a result, limits on commercial formats), will adversely change the economics of creating a new network, and equally important, will adversely affect the economics of building and operating the television stations necessary to support additional networks. Thus, in an effort to protect the public from excess broadcast

commercialization, the Commission would actually be significantly harming the diversity of free programming available to the public, thereby further encouraging the already substantial migration of viewers, advertisers, and programming to cable. Such a result is neither desirable nor justifiable on the basis of limiting an as yet unproven excess of broadcast commercial matter. The Commission should therefore continue its current policy of letting the market regulate itself and encourage, rather than hinder, the efforts of the broadcast industry to stay competitive while serving the public.

Conclusion

Commercial limitations, no matter how carefully crafted, will inevitably harm local broadcast stations to the detriment of the public. It is critical that the Commission maintain a flexible regulatory atmosphere in order to encourage investment and growth in the broadcast industry. The Association therefore urges the Commission to terminate this proceeding and continue to rely on the judgment of broadcasters, the public, and the marketplace to decide the appropriate types and amounts of broadcast advertising. Any other course would be both unwise and unjustifiable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Susan R. Fisenne, hereby certify that I have this 20th day of December, 1993, caused to be hand delivered copies of the foregoing "Comments of the FBC Television Affiliates Association" to the following:

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